

## Fourth Circuit Casts Doubt on Effectiveness of Releasing FMLA Claims

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In a recent decision, the U.S. Court of Appeals for the Fourth Circuit held that employers and employees cannot make private agreements releasing claims under the Family and Medical Leave Act ("FMLA"). In *Taylor v. Progress Energy, Inc.*, the appeals court found that both prospective and retrospective releases or waivers of FMLA claims are only enforceable if made with court approval or the approval of the Department of Labor.

In *Taylor*, the plaintiff claimed her former employer violated the FMLA by: (1) not fully informing her of her FMLA rights; (2) improperly denying her requests for medical leave; (3) terminating her employment because of her medical absences; and (4) terminating her employment because she complained about the company's violations of the FMLA. The employer attempted to defend the claim by arguing that the employee had signed a severance agreement and release of all claims at the time of termination. While the agreement did not specifically mention the release of all FMLA claims, it contained "catch all" language that stated the release waived the employee's right to sue under Title VII, the Americans with Disabilities Act, and other named statutes as well as "any other federal, state, or local laws."

The Court rejected the employer's argument and found that the plain language of the Department of Labor's FMLA regulations prohibits any private release under the FMLA. 29 C.F.R. § 825.220(d) states that "employees cannot waive, nor may employers induce employees to waive, their rights under [the] FMLA." The Court therefore concluded that, just as is the case with minimum wage and overtime claims under the Fair Labor Standards Act, an employee may not make a binding release without court approval or approval of the Department of Labor. Employers should note that the Department of Labor insists this principle applies even to a settlement of claims after suit has been filed, and even if the employee is represented by competent and experienced counsel. If neither the Court nor the Labor Department has reviewed the settlement and approved it, the settlement is not binding on the employee.

The Fourth Circuit's decision creates a conflict among the Circuits regarding this issue. In another case, the Fifth Circuit (with jurisdiction over Louisiana, Mississippi and Texas) found the same regulation prohibits only the waiver of future FMLA claims, not claims which have already been made. Unless this conflict is resolved by the Supreme Court (and it is not clear whether Progress Energy will seek Supreme Court review), employers should proceed carefully in preparing separation agreements that contain releases of FMLA claims. Employers operating in the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia) should consider removing any language specifically releasing FMLA claims in separation agreements.

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